

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE SERVICES**

**Before the Commissioner of Financial and Insurance Services**

**In the matter of**

**XXXXX**

**Petitioner**

**v**

**Blue Cross Blue Shield of Michigan**  
**Respondent**

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**File No. 85305-001**

**Issued and entered**  
**this 13<sup>th</sup> day of November 2007**  
**by Ken Ross**  
**Acting Commissioner**

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On September 21, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on September 28, 2007.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on October 12, 2007.

**II**

**FACTUAL BACKGROUND**

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) under its *Community Blue Group Benefits Certificate* (the certificate).

The Petitioner, through her surgeon, requested authorization from BCBSM for a meniscal allograft transplantation (procedure code 29868) to repair her left knee. The estimated surgeon's fee for this procedure is \$24,000.

BCBSM denied authorization for the procedure because it considers it experimental and therefore a nonpayable service. The Petitioner appealed BCBSM's denial through the internal grievance process. After a managerial-level conference on August 15, 2007, BCBSM did not change its decision and issued a final adverse determination dated August 22, 2007.

### **III ISSUE**

Did BCBSM properly deny authorization for the Petitioner's meniscal allograft transplantation?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner, 28 years old at the time she requested this review, suffers from lateral-sided left knee pain; any weight-bearing on her left leg limits her activities of daily living. She underwent a meniscectomy in 2003. She also had diagnostic arthroscopy surgery on her knee in February 2007 and that surgery showed that more than half of the lateral meniscus was absent after the earlier meniscectomy. Her doctor then recommended a meniscal allograft transplantation (procedure code 29868) to repair her knee.

The Petitioner's doctor found that there was evidence that the patellofemoral compartment of the Petitioner's knee had rapidly "gone down hill" and was "quickly progressing with secondary arthrosis in a lateral meniscectomized state."

The doctor has recommended a lateral meniscus allograft transplantation and femoral condyle allograft to her lateral femoral condyle. Without intervention to restore the cartilage of the

left knee, the doctor thought her condition was one of progressive secondary arthrosis that would eventually lead to a total knee replacement.

The Petitioner believes that BCBSM is required to authorize and pay for her recommended allograft surgery because it is the only way she can regain the use of her knee.

#### BCBSM's Argument

Under the provisions of the certificate, BCBSM does not pay for experimental treatment or services related to experimental treatment. BCBSM's medical director reviewed the documentation and concluded that the meniscal allograft transplantation surgery that was recommended is investigational for the Petitioner's diagnosis and is nonpayable.

BCBSM says that meniscal allograft transplantation has not been scientifically demonstrated to be as safe and effective as conventional treatment. Therefore, it meets the definition of investigational and is not covered.

#### Commissioner's Review

The certificate sets forth the benefits that are covered. In *Section 6: General Conditions of Your Contract*, it says (page 6.3):

We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment, except<sup>1</sup> as explained under "Services That Are Payable" below.

Also, the certificate, in *Section 7: The Language of Health Care* on page 7.7, defines "experimental treatment" as:

Treatment that has not been scientifically proven to be as safe and effective for treatment of the patient's condition as conventional treatment.

The question of whether the Petitioner's meniscal allograft transplantation is considered investigational or experimental in nature was presented to an IRO for analysis as required by section

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<sup>1</sup> The experimental treatment exceptions deal only with services in an approved oncology clinical trial.



11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is board certified in orthopedic surgery, holds an academic appointment, and has been in active practice for more than five years.

The IRO reviewer said that there is not enough long term outcome data to establish meniscal allograft transplantation as a safe and effective treatment for cartilage lesions of the knee with degeneration. Further outcome data from randomized controlled clinical trials is needed to establish the efficacy and safety of the requested procedure. Therefore, the IRO medical reviewer concluded that a lateral meniscal allograft reconstruction and a meniscal osteochondral allograft revision are investigational or experimental for treatment of the Petitioner's condition at this time.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that the requested meniscal allograft transplantation is investigational or experimental and therefore is not a covered benefit under the certificate.

## **V ORDER**

Respondent BCBSM's August 22, 2007, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's meniscal allograft transplantation at this time.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered

person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.